

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 122 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME-TAX

Versus

CHALTHAN VIBHAG KHAND UDYOG

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Appearance:

MR MANISH R BHATT for Petitioner  
MR JP SHAH for Respondent No. 1

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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE M.C.PATEL

Date of decision: 20/07/98

ORAL JUDGEMENT (Per C.K.Thakker, J)

The following question is referred to us for our consideration :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee was entitled to

deduction as contemplated under sections 80P & 80G of the Income-tax Act, 1961?"

2. The assessee is a co-operative society engaged in manufacturing white sugar from sugarcane. For the assessment year 1974-75 it claimed deduction of Rs.2,89,855/- under Section 80P(2)(d)(i) and Rs.233 under Section 80P(2)(d) of the Income-tax Act, 1961. The Income Tax Officer (I.T.O.) disallowed the assessee's claim made under Section 80P(2) of the Act on the ground that there was no positive income after giving effect to carried forward losses of earlier years. The Commissioner (Appeals) upheld the decision of ITO and further appeal filed before the Income-tax Appellate Tribunal also came to be dismissed.

3. We have considered the submission of the learned Counsel for the assessee. We have also perused the decision of the High Court of Madras in Commissioner of Walth Tax, Tamil Nadu II Vs. K.Lakshmi; 142 ITR 657. In our opinion, however, the Tribunal has not committed any error of law. Considering Section 80 B(5) as interpreted by the Supreme Court in Commissioner of Income-Tax v. Kotagiri Industrial Co-operative Tea Factory Ltd reported in 224 ITR 604, the Tribunal was right in passing the impugned order.

4. Almost in similar circumstances, the Supreme Court held that before considering the matter of deduction under Section 80 B (5), the Income Tax Officer rightly set off the credit loss of earlier years in accordance with Section 42 of the Act and finding that the same exceeded, the ITO did not allow the deduction under Section 80 P of the Act. The principle laid down by the Supreme Court in Kotagiri Industrial Co-operative Tea Factory Ltd will apply to the facts of the present case also.

5. We, therefore, see no reason to uphold the contention on behalf of the assessee. Accordingly, the reference is answered in favour of the Revenue and against the Assessee. No order as to costs.

(C.K.Thakker, J)

(M.C.Patel, J)

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